

FCC MAIL SECTION

DOCKET FILE COPY  
ORIGINAL

MAR 3 12 37 PM '93

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

FCC 93-123

DISPATCHED BY

In the Matter of )  
 )  
Policies and Rules Concerning )  
Children's Television Programming )  
 )  
Revision of Programming Policies )  
for Television Broadcast Stations )

MM Docket No. 93-48 ✓

NOTICE OF INQUIRY

Adopted: March 2, 1993

Released: March 2, 1993

Comment Date: April 23, 1993

Reply Date: May 24, 1993

By the Commission: Commissioner Marshall not participating.

1. The Commission adopted policies and rules implementing the Children's Television Act of 1990<sup>1</sup> (CTA) on April 9, 1991. Report and Order, 6 FCC Rcd 2111, recon. granted in part, 6 FCC Rcd 5093 (1991). The CTA and our implementing rules impose both an affirmative children's programming obligation on broadcasters and restrict the amount of commercial time that may be placed in children's programming. We have now reviewed more than 320 television license renewal applications subject to the CTA's requirements. The majority of these applications demonstrated adequate efforts to meet the programming needs of children given that very limited portions of the applicants' license terms were subject to the CTA.<sup>2</sup> At the same time, however, we want to ensure that broadcasters having significantly longer periods remaining in their license terms be aware of Congress' intent to expand and improve the level of educational and informational programming directed at children. Accordingly, we initiate this proceeding to seek comment on whether and in what manner our rules and policies might be revised to more clearly identify the levels and types of programming necessary in the long term to adequately serve the educational and informational needs of children.

2. **Background.** The CTA's objectives were to increase the amount of educational and informational broadcast television programming available to

<sup>1</sup> Pub. L. No. 101-437, 104 Stat. 996-1000, codified at 47 U.S.C. Sections 303a, 303b, 394.

<sup>2</sup> Television license renewal applications filed since February 1992 have been reviewed under the CTA criteria. To date, therefore, renewal applicants have, at most, had one year of their five year license terms subject to CTA requirements.

children and to protect children from over-commercialization of programming.<sup>3</sup> A review of the CTA's legislative history reflects Congressional concern as to the amount and type of children's television programming and the limited time periods during which children's programming is broadcast. Congress explained that time periods designated for "children's programming" are often filled with reruns of adult or family comedy, variety, or dramatic programs.<sup>4</sup> Congress noted that, on the average, each of the networks air an after-school special one day a month during the school year and that independent stations tend to offer programs to children during the week that consist of animated cartoons, often with commercial products associated with them.<sup>5</sup>

3. Accordingly, Congress directed the Commission to review at renewal, among other things, whether television broadcasters have served the educational and informational needs of children.<sup>6</sup> The legislative history of the CTA suggests that programming that furthers children's positive development in any way, including serving their cognitive/intellectual or social/emotional needs, could qualify as part of broadcasters' efforts to meet this obligation. Examples of such material were given and included programs like "Fat Albert and the Cosby Kids", which dealt in a meaningful way for children with issues such as drugs, divorce, friendship and child abuse.<sup>7</sup> For additional examples see the Commission's Report and Order, supra, at para. 26.

4. Pursuant to our rules implementing the objectives of the CTA,<sup>8</sup> starting on October 1, 1991, television station licensees were required to respond to the educational and informational needs of children 16 years of age and under through their stations' overall programming, including programming specifically designed to serve such needs. In accordance with the CTA's legislative history, however, no minimum amount of such programming has been prescribed. Nor has any programming that does, in fact, serve children's educational and informational needs been excluded from consideration in demonstrating compliance with the CTA. Short segment programming, including vignettes and public service announcements, live action, animated and general audience programs, whether network, syndicated or locally produced, can all be relied upon as contributing to a licensee's programming efforts on behalf of children. Thus, as Congress intended, television licensees enjoy substantial discretion both in determining whether a particular program qualifies as

---

<sup>3</sup> Children's Television Act of 1989, Senate Committee on Commerce, Science, and Transportation, S. Rep. No. 227, 101st Cong., 1st Sess. 22 (1989) (Senate Report).

<sup>4</sup> Senate Report at 8.

<sup>5</sup> Id.

<sup>6</sup> For purposes of the programming obligations imposed by the CTA, the Commission has defined children as individuals aged 16 or under.

<sup>7</sup> See Senate Report at 7.

<sup>8</sup> The rules are 47 C.F.R. Sections 73.520 and 73.671.

educational and informational and in fixing the level or amount of children's programming that it will air. Plainly, however, that discretion is not unlimited. We have, for example, stated that some standard-length programs specifically designed to serve the educational and informational needs of children must be aired to fulfill a licensee's obligations under the CTA.<sup>9</sup> Moreover, it seems clear that Congress intended, in adopting the CTA, to increase the amount of educational and informational programming aimed expressly at the child audience.<sup>10</sup>

5. **Discussion.** At the outset, we acknowledge the substantial difficulty inherent in adequately particularizing broadcasters' children's programming obligations while also affording licensees the discretion that Congress intended to reserve to them in meeting that obligation. To this point, consistent with Congress' express preference for avoiding quantitative standards and for relying on licensee judgment in meeting children's programming needs, we have consistently favored statements of purpose over specific regulatory requirements. We continue to believe that licensees must, for the most part, themselves define the appropriate scope of their service to children in their communities. At the same time, of course, we are obliged to review the adequacy of that service at renewal. In light of our experience in reviewing renewal applications that are subject to the CTA's programming requirements and in evaluating the efforts licensees have documented to meet those requirements, we believe that refinement of our implementation of the CTA may be warranted.

6. For example, an informal comparison of the children's television programming listed in recently filed renewal application exhibits with Congressional findings set forth in the CTA's legislative history, suggests little change in available programming that addresses the needs of the child audience.<sup>11</sup> The number of hours and time slots devoted to children's programming do not appear to have substantially changed. Further, with few exceptions, the "educational and informational" programming broadcast appears to be those same few programs set forth in the legislative history for illustrative purposes. Moreover, while practically all licensees filing renewal applications in the current renewal cycle have identified some regularly scheduled, standard-length children's programming aired during their license terms, the amount of such programming is, in some cases, very

---

<sup>9</sup> Children's Television Reconsideration Order, 6 FCC Rcd 5093, 5101 (1991).

<sup>10</sup> See, e.g., Senate Report at 1.

<sup>11</sup> We acknowledge the possibility that program suppliers may not yet have made available significant amounts of standard-length programming expressly directed to the educational and informational needs of children because the obligation to air it and the demand generated by that obligation are relatively recent developments. To the extent that this "supply shortage" explains the slow growth to date in "core" children's programming by broadcasters, we seek specific comment on whether the supply of such "core" programming will resolve itself as long as broadcasters clearly understand and express their children's programming needs.

limited.<sup>12</sup> Many of these licensees place substantial reliance on short-segment vignettes and public service announcements to satisfy their CTA obligations.<sup>13</sup> Finally, some licensees are proffering such animated programs as "The Flintstones" and "G.I. Joe" as informational and educational, asserting that such programs include a variety of generalized pro-social themes.

7. We do not believe that this level of performance is, in the long term, consistent with the objectives underlying the CTA. We wish to make clear that we do not attribute the programming performance suggested by our renewal experience to date to any unwillingness to comply or any intentional disregard for their programming responsibilities on the part of broadcasters. Rather, we believe that broadcasters may remain uncertain as to the scope of their programming obligations and that this uncertainty may largely explain the apparent lack of growth in children's programming. Indeed, where the CTA has imposed specific, palpable performance standards -- as it has with respect to commercial time limits in children's programming -- broadcasters' compliance rate appears to be quite high.<sup>14</sup> We conclude that both the Commission and licensees might benefit from further efforts to exemplify and define the CTA's programming requirements. Accordingly, we believe it is appropriate to again address some of the more difficult issues raised by the statute and our rules and to inquire how we might better guide broadcasters in discharging their children's programming obligations. We seek comments, therefore, on the broad range of implementation and compliance issues suggested by the foregoing discussion as well as on the following, specific preliminary views.

8. First, we believe that broadcasters should place their primary reliance in establishing compliance with the CTA on standard-length programming that is specifically designed to serve the educational and informational needs of children, and should accord short-segment programming

---

<sup>12</sup> "Standard-length" programs are generally understood to be at least one half-hour long. To date, some licensees filing renewal applications in the current renewal cycle have identified as little as one such standard-length "core" children's program aired on a weekly basis.

<sup>13</sup> Other activities in support of children's programming, including support for other stations' broadcast efforts or non-broadcast activities that assist or supplement broadcast material, may also be relied upon in meeting a licensee's children's programming obligations.

<sup>14</sup> Commission review of advertising practices in children's programming have so far found compliance rates exceeding 90%. For example, in January 1992, the Commission conducted field audits of some 141 television stations and 27 cable systems to determine compliance with the commercial time restrictions. All but 10 of the stations or systems sampled clearly complied with the limitations, a better than 94% overall compliance rate. More recently, the Commission conducted a further audit of commercial time use in children's programming by television stations and cable systems, the results of which are not yet final. Preliminary figures, however, again suggest that overall compliance rates will exceed 90%.

secondary importance in this regard. Standard-length programming is scheduled and therefore available to the child audience at predictable times. This is especially important to parents who may be more directly involved in screening the television viewing of younger children. Second, to avoid definitional problems, we believe it may be appropriate to specify that the primary objective of qualifying "core" children's programming should be educational and informational, with entertainment as a secondary goal. In other words, we believe broadcasters should focus on programming that has as its explicit purpose service to the educational and informational needs of children, with the implicit purpose of entertainment, rather than the converse.<sup>15</sup> This may help to avoid potentially misplaced reliance by licensees on entertainment programming that is asserted to be informational or educational based principally on a "wrap-around" pro-social message.<sup>16</sup>

9. We also seek comment on whether, to provide clearer guidance to licensees and to facilitate renewal review by the Commission, we should adopt staff processing guidelines specifying an amount and type of children's programming that would permit staff grant of a license renewal application meeting the guideline, while applications not satisfying the processing criteria would be subject to further review. If so, what should such guidelines be (e.g., one hour per week or one hour during the week and one hour during the weekend of standard-length, informational and educational programming)? How should such a standard be affected by the amount, scheduling and quality of the standard-length material that is aired or by the broadcast of other programming that Congress acknowledged could contribute to meeting children's needs, but that does so indirectly (e.g., family programming or children's entertainment programming that carries a secondary educational, ethical or informational message)? Would such an approach violate Congress' expressed intention to avoid a minimum quantitative programming test? In this latter regard, it should be noted that failure to meet the guideline would not necessarily result in any sanction or non-renewal; rather it would determine the intensity of Commission scrutiny. On the other hand, we have acknowledged, in other contexts, that processing

---

<sup>15</sup> This clarification should help licensees and the Commission to avoid the difficult and subjective task of distinguishing the relative educational merits of some programs identified approvingly in the legislative history (e.g., Pee Wee's Playhouse, The Smurfs, Winnie the Pooh, see Senate Report at 7-8) and those listed in some renewal applications as educational (e.g., The Flintstones or The Jetsons).

<sup>16</sup> "Wrap around" refers to the practice of inserting a pro-social message at the beginning and end of an "entertainment" program in an effort to make it qualify as "educational and informational." We do not suggest, of course, that entertainment programming with a secondary informational or educational message cannot contribute to a broadcaster's children's programming efforts. Such material cannot, however, satisfy the "core" standard-length programming element of the programming obligation imposed by the CTA.

guidelines in the renewal area can take on the force of a rule, at least in the perception of licensees.<sup>17</sup>

10. We seek comment on the foregoing matters and on any related issues that may assist us in better implementing the requirements and underlying objectives of the Children's Television Act.

#### Procedural Matters

11. Pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's rules, 47 CFR Sections 1.415 and 1.419, interested parties may file comments on or before April 23, 1993, and reply comments on or before May 24, 1993. All relevant and timely comments will be considered by the Commission before taking further action in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comments, reply comment and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original and nine copies must be filed. Comments and reply comments should be sent to Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (Room 239) of the Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

12. For further information concerning this Notice of Inquiry, contact Barbara A. Kreisman (202-632-6993), Mass Media Bureau, Video Services Division, Federal Communications Commission, Washington, D.C. 20554.

FEDERAL COMMUNICATIONS COMMISSION

*Donna R. Searcy*

Donna R. Searcy  
Secretary

---

<sup>17</sup> See, e.g., Notice of Proposed Rulemaking in MM Docket No. 83-313 (Television Deregulation), 94 FCC 2d 678, 696 (1983).